

IN THE MATTER OF LICENSE NO. 301848 AND DOCUMENT NO. Z-530985

Issued to: Josip WOLLITZ Z-530985

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1631

Josip WOLLITZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 July 1966, an Examiner of the United States Coast Guard at New York, N.Y., suspended Appellant's license for 2 months outright upon finding him guilty of negligence. The specification found proved alleges that while serving as master on board the United States SS PIONEER MYTH under authority of the license above described, on or about 2 July 1966, Appellant failed to go at moderate speed in fog, thereby contributing to a collision with MV VISEVICA in the Atlantic Ocean.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer gave a summary of pertinent facts in his opening statement.

In mitigation, Appellant offered in evidence the testimony of two long-time colleagues.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved by plea. The Examiner then entered an order suspending Appellant's license for a period of two months.

The entire decision was served on 15 July 1966. Appeal was timely filed on the same date.

FINDINGS OF FACT

On 2 July 1966, appellant was serving as master on board the United States SS PIONEER MYTH and acting under authority of his license while the ship was at sea.

On that date PIONEER MYTH was en route, along the New Jersey Coast, from New York to Charleston. Speed was 19.5 knots. At 0320 visibility was about ten miles. Radar was in operation.

At 0340 the watch officer called Appellant to the bridge since

visibility had diminished. Appellant commenced sounding fog signals. At 0359 BARNEGAT LIGHT VESSEL was passed at a distance of half a mile, unseen in the fog. At 0403 "stand-by" was rung up. At 0411 MV VISEVICA was picked up on radar at twelve miles. Visibility was 500 feet,

The vessels collided between 0445 and 0450, about fifteen miles south of BARNEGAT LIGHT VESSEL. At the moment of impact the vessels had been in sight of each other for only a few seconds. PIONEER MYTH was still at full ahead, for 19.5 knots, and visibility was still at about 500 feet.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order is excessively harsh because:

- (1) Appellant's exemplary record justified leniency;
- (2) Appellant complied with Annex (6) to the International Rules by altering course to the right, and the collision would not have occurred but for the other vessel's last minute alteration of course to the left; and
- (3) the situation in Viet Nam makes it desirable not to suspend an experienced master's license.

### OPINION

#### I

To attend first to Appellant's second point, it is noted that an asserted compliance with Annex (6) to the International Rules of the Road has not bearing whatsoever upon the negligent offense found proved, immoderate speed in fog. Appellant pleaded guilty to this offense and admitted that his speed was a contributory cause of the collision. An allegation on appeal that the actions of the other vessel were the sole cause of the collision. An allegation on appeal that the actions of the other vessel were the sole cause of collision cannot be heard.

#### II

Appellant's long record as a master of great capability, to the satisfaction of his owner, is undeniable. Nor can his wartime performance of duty be ignored.

Such considerations, known to the Examiner, cannot persuade me that the suspension ordered

is excessive.

One need not speculate that the Actions in this case betoken a habit, hitherto accompanied by luck, of violating the cardinal rule for fog navigation.

The record here shows that Appellant well knew that visibility was only about a ship length. his precautions were to sound fog signals and to place his engine on stand-by. Both these actions were tacit admissions that his speed was excessive. That placing the engine on "stand-by" is not a mitigatory action is best illustrated in this case in which the alerted engine-room personnel were never called upon to reduce speed until after collision.

It would be hard to imagine a more flagrant case of immoderate speed in fog than this. No emergency condition requiring licensed masters can render the Examiner's order in this case unreasonably severe.

### III

It is noted that the Examiner in this case ascertained the prior record of Appellant off the record and without Appellant's consent. Since the record was negative no possible prejudice resulted from this error.

### ORDER

The order of the Examiner dated at New York, N.Y. on 14 July 1966, is AFFIRMED.

W. J. SMITH  
Admiral, U. S. COAST GUARD  
Commandant

Signed at Washington, D. C., this 5th day of June 1967.

## INDEX

### SPEED IN FOG

immoderate

### GROUND FOR APPEAL

may not controvene guilty plea

### PRIOR RECORD

not ascertained on the record; error